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1707 and a nation divided on union

Continuing in collaboration with the University of Glasgow's Vox Populi series, Karin Bowie considers what ordinary Scots felt on the eve of 1707

Who has the power to decide on questions of union and independence? The proposed 2014 referendum has triggered debates on constitutional powers – should the directly-measured voice of the Scottish people or the votes of representatives in parliament have the authority to unmake the Union? Earlier this month, these questions were resolved in favour of a referendum, but the underlying issue of how best to hear the voice of the people continues to be relevant. Similar concerns were heard in Scotland in the century before the Union of 1707.

Between 1603 and 1707, the independent kingdoms of Scotland and England were united by a shared monarchy. Across this period, the terms of union between the two kingdoms were reconsidered on no less than eight occasions. It was accepted that the consent of the Scottish nation was required for any fundamental change in the country's relationship with England and it was presumed that the Scottish Parliament would provide that consent, but – as the century progressed – disagreement arose over whether the Scottish Parliament or the people themselves should voice the consent of the nation.

Then, as today, the debate was shaped by views held on union: those who opposed closer union with England were more likely to advocate popular consent, while those who supported a united kingdom preferred parliamentary approval.

After inheriting the English crown in 1603, Scotland's King James VI sought to create a new united kingdom of Great Britain. He asked his Scottish Parliament to authorise negotiations on the integration of the two kingdoms.

The parliament assumed a large degree of control over this process: it named individuals to negotiate the treaty, barred them from discussing any change to the "fundamental law" of Scotland and insisted that any resulting treaty be approved by parliament.

Ultimately the king's British project foundered, and though James VI used his royal power to declare himself king of Great Britain, this was a mere rebranding exercise.

Ruling the independent kingdom of Scotland from London, James and his son Charles I sought to build up their royal powers and reduce the role of the Scottish Parliament in Edinburgh. Growing resentment in Scotland, however, was to express itself in open rebellion. Led by the Covenanters, the Scottish Parliament in 1639-41 authorised war against King Charles I, sanctioned the invasion of England and negotiated substantial changes to the terms of union.

In 1643, another alteration was made with parliamentary approval of a Solemn League and Covenant with England. The Kirk took a prominent role in approving this constitutional change, with the General Assembly voting alongside parliament to approve it. Moreover, the Covenanting regime engaged the people in this new federal alliance by requiring all adults in Scotland to swear an oath to uphold its terms.

After the conquest of Scotland by English forces in 1651, Oliver Cromwell also turned to the people of Scotland to approve the creation of a united commonwealth. "Deputies" were called from the shires and burghs to indicate the nation's acceptance of a "Tender of Union" in 1652. In a process conducted under military occupation, a majority agreed to join the English Commonwealth.

After Cromwell's death, Charles II restored the Scottish Parliament as the arbiter of union, though under greater control from London. In 1663, parliament ceded power to the monarch to manage trade negotiations with foreign kingdoms. The king chose Scottish commissioners for what would prove to be unsuccessful trade talks with England in 1668.

Charles II then asked parliament to authorise discussions for a full union of the kingdoms, but this time he was to name the negotiators. Parliament bowed to the king's desire, though members retained the right to approve any treaty of union.

To combat the possibility that parliament might pass a union treaty, two lord advocates questioned whether the assembly had the power to change the constitution. In the opinion of Sir John Nisbet of Dirleton (Lord Advocate, 1664-77), representatives could not do so without "special authority". Sir George Mackenzie of Rosehaugh (Lord Advocate, 1677-86 and 1688-89) argued that constituents would have to be consulted and that members would need to consent unanimously.

It may seem surprising that these royalist lawyers turned to the electors rather than the king, but, in 1670, both Nisbet and Mackenzie were opposed to a united kingdom, while the king was not. These legal opinions were to prove useful to those opposing union in 1706-07.

Before this, however, parliament's power to change the constitution was affirmed in the revolution of 1688-89. Following the invasion of England by William of Orange and the flight of James VII and II to France, a form of parliament, a Scottish Convention, offered the crown to William and his wife, Mary Stuart. At William's request, the convention named negotiators for a union with England but placed no restrictions on talks designed to create one united kingdom.

The English, however, were less interested in union. It took until 1702 for Queen Anne to propose union talks again. As in 1604 and 1689, the Scottish Parliament named the negotiators. This time soft limits were placed on the talks, with a letter asking the queen to preserve the national Presbyterian church. But again, these talks foundered. Anne tried yet again in 1705. The opposition tried to introduce a clause that would block a complete union, but could not secure a majority for this.

Surprisingly, the opposition leader, the Duke of Hamilton, proposed that the queen choose the negotiators, as in 1670. Hamilton seems to have hoped that he would be nominated, but the queen chose sympathetic negotiators who produced a treaty for a union of the kingdoms and their parliaments.

Opponents in 1706 combined the lord advocates' views with Whig notions of popular consent to argue that the Scottish Parliament could not approve the treaty. Andrew Fletcher of Saltoun led this approach by contending that parliament did not have a mandate for union, until it was pointed out that the most recent call for elections had mentioned Anne's desire for union.

Others demanded a recess to allow consultation with constituents and dozens of petitions were generated from shires, burghs and parishes to indicate grassroots opposition. Clergymen insisted that the General Assembly should vote on the union, as in 1643. The pamphleteer James Hodges went furthest of all, arguing that union could only be approved by a national assembly of "the Whole Freeborn Subjects of Scotland" – he even included "All the Boanie Lasses".

In response, unionists cited the dangers of democracy and rejected petitions as tantamount to mob rule. The Earl of Cromarty developed a historical case for parliamentary sovereignty in Scotland, arguing that the Scottish people in ancient times had devolved their sovereign power to their king and his "great council". The members of parliament, therefore, had a full and free power to enact the union, regardless of opinions voiced by their constituents.

Three hundred years later, democracy is considered less dangerous, but western states still debate the extent to which popular consent should be measured through representative or direct means. The Scottish debates before 1707 show the very long history of these issues.

The union question stimulated unusually liberal thinking in Scotland on political participation, though for instrumental purposes. Today, as in the past, the union question can stimulate fresh thinking, but it can also restrict debate by harnessing arguments on the power of parliament and the people to political positions on Scotland's constitutional future.

• **Dr Karin Bowie is a lecturer in history at the University of Glasgow. Today's seminar, National Opinion and the Union Question before 1707 is in the Boyd Orr Building at the University of Glasgow at 5:30pm and is open to the public.**
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